



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention of:

Notice: PIH-2010- 33 (TDHEs)

Tribes, Tribally Designated
Housing Entities, Indian
Housing Authorities, ONAP
Administrators

Issued: August 6, 2010

Expires: August 31, 2011

Cross Reference: 24 CFR 1000

SUBJECT: Reinstatement – PIH Notice 2009-6 (TDHEs) – Administrative
Requirements for Investing Indian Housing Block Grant (IHBG) Funds

1. **PURPOSE:** This Notice establishes the basis upon which the Department will determine if a recipient of Indian Housing Block Grant (IHBG) funds, as authorized by the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 (Pub. L. 104-330, as amended), has the administrative capacity to draw down IHBG funds for investment purposes.
2. **BACKGROUND:** NAHASDA is implemented through HUD regulations at 24 CFR Part 1000. These regulations were developed by a Negotiated Rulemaking Committee comprised of 48 tribal members and 10 HUD representatives. One provision of the regulation, 24 CFR §1000.58, authorizes a recipient to invest certain grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary. The recipient may continue to invest NAHASDA funds in accordance with 24 CFR §1000.58 as long as it demonstrates to HUD that it has administrative capacity.
3. **DEFINITIONS:**
 - a. Self-governance tribe - For purposes of this notice, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 et seq).
 - b. Recipient - An Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under this Act on behalf of the tribe or tribes.
 - c. Significant and Material Audit Findings - For purposes of this notice, a significant or material finding is one that (1) identifies a material weakness in financial or accounting controls; or (2) a finding of substantial financial mismanagement or misapplication of funds that has not been resolved; or (3) has any questioned costs for HUD programs

that were subsequently disallowed, and which total 5 percent or more of the total expenditures for HUD programs identified in the audit.

4. PROCEDURE:

Pursuant to 24 CFR §1000.58(b), an IHBG recipient must demonstrate, to HUD's satisfaction, that:

- a. There are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under the Single Audit Act or in an independent financial audit prepared in accordance with generally accepted auditing principles; and
- b. It is a self-governance Indian tribe or that it has the administrative capacity and controls to responsibly manage the investment.

5. DOCUMENTATION REQUIRED:

- a. In order to document that there are no unresolved significant and material audit findings or exceptions, the recipient must submit to the Area Office of Native American Programs (ONAP) the most recent annual audit of the recipient together with evidence that the cognizant audit agency (if other than HUD) reviewed and accepted the Single Audit Act report. ONAP must also be provided with a status of the Single Audit Act findings controlled by the cognizant agency (if other than HUD). This audit must be current in accordance with the Single Audit Act requirements. If an independent financial audit was conducted in place of an annual audit or in addition to an annual audit, a copy of this financial audit must be submitted. Based on the information provided, the Area ONAP will determine if there are any unresolved significant and/or material audit findings. If the recipient is not required to submit an audit report under the Single Audit Act, an audit will not be required to comply with this provision. If the recipient is a newly created tribally designated housing entity (TDHE) without a current audit, an audit will not be required to comply with this provision.
- b. To document that the recipient is a self-governance tribe as defined above, a certification from the tribe that it is a self-governance tribe or a copy of the designation from the Bureau of Indian Affairs must be submitted. This provision applies only if the tribe is the recipient. If the tribe has designated a TDHE, the recipient is the TDHE, not the tribe, and the TDHE must demonstrate its administrative capacity and controls as outlined below in section 5c.
- c. If the recipient is not a self-governance tribe, the recipient must demonstrate it has the administrative capacity and controls to responsibly manage the investment by meeting the following requirements:

1. The recipient's financial management system must comply with 24 CFR §85.20. This includes accurate, current, and complete financial reporting, adequate accounting records, effective internal controls, budget control, and reasonable procedures for cash management. In order to document to ONAP that a system is in place, the recipient shall submit the following:
 - a. A copy of the internal control policy. The policy must provide for adequate safeguard of all grant and subgrant cash, real and personal property, and other assets. Additional provisions of the policy must be as follows:
 - authorization by the appropriate oversight body (e.g., the Board of Commissioners) for the transaction, documented in the official records of that body;
 - safekeeping procedures covering security of investment documents;
 - separation of responsibilities for custody of securities from maintenance of accounting records;
 - maintenance of investments in a custodian or trust account;
 - investments made only in the name of the IHBG recipient;
 - investments recorded in detail in an investment ledger;
 - use of a system to ensure that all interest earned is collected, recorded, and credited to appropriate accounts;
 - periodic reconciliation to the investment ledger; and
 - requirement to maintain a maturity schedule (See Paragraph 7b.)
 - b. A certification that the recipient has a written investment policy. The policy must include a statement of purpose, list the eligible investment instruments, contain an assignment of authority to staff, and outline each staff member's responsibilities.
2. The recipient shall have no outstanding findings as a result of a HUD audit or review (including Inspector General Audits) that affects the administrative capacity and controls to responsibly manage the investment. The recipient shall submit a certification that there are no findings that affect the administrative capacity.

6. PROCESSING REQUESTS:

- a. A recipient requesting approval to invest IHBG funds in accordance with 24 CFR §1000.58 must submit the documentation outlined above to the Area ONAP. The Area ONAP will review the documentation and approve or disapprove the request within 60 calendar days of receipt of the request.

- b. If the request is approved, the recipient will receive written notification with the effective date that the investment draw down will be available in LOCCS and the amount available for investment purposes based on the calculation in 24 CFR §1000.58(f).
- c. If the request is not approved by the Area ONAP, the recipient will be notified in writing with the specific reasons for the denial. Within 30 calendar days of receiving HUD's denial of a request for investment, the recipient may request reconsideration of the denial in writing. The request shall set forth justification for the reconsideration. Within 30 calendar days of receiving the request, HUD shall reconsider the recipient's request and either affirm or reverse its initial decision in writing, setting forth its reason for the decision. If the decision was made by the Assistant Secretary, the decision will constitute final agency action.
- d. If the request is denied and an appeal is not successful, the tribe or TDHE may request another determination when the conditions for denial have been corrected. This resubmittal will be processed in accordance with the procedures in 6a. above.

7. ADDITIONAL INFORMATION

- a. **Depository Agreement:** IHBG funds shall be held in one or more accounts separate from other funds of the recipient. Each of these accounts shall be subject to a general depository agreement. Notice PIH 2005-23, extended by Notice PIH 2009-7, Depository Agreements for Recipients of the Indian Housing Block Grant Program, transmits the current depository agreements forms to be used when investing IHBG funds; form HUD-52736A (10/2004) for banking accounts and form HUD-52736B (10/2004) for brokers/dealers. The Notice also clarifies when to use depository forms and when tribes or TDHEs may utilize brokers in the investment of IHBG funds under 24 CFR 1000.58.
- b. **Term of Approval:** Once a recipient has been approved for investing IHBG funds, the approval is valid as long as the requirements outlined in section 4 of this notice can be met. In addition, the approval is only for the recipient that requested the approval for investing IHBG funds, i.e., the tribe or TDHE. If the recipient is changed, for example, from a TDHE to a tribe, the tribe must be approved for investing IHBG funds.
- c. **Maturity Schedule:** Investments may be for a period no longer than 2 years. The 2-year period starts on the date the recipient draws down funds for investment purposes. The 2-year requirement is the maximum period of time that any amount drawn down for investment can be invested before disbursement on an affordable housing activity.

Prior to drawing down funds for investment purposes, the recipient should do an analysis of anticipated cash needs for this 2-year period, and identify those acceptable investment options or instruments with varying dates of maturity (shorter and longer

term) within the projected 2-year period. The recipient shall maintain a schedule evidencing that the proposed investments will mature on the approximate dates the funds will be needed and that investment maturity dates do not exceed 2 years.

When an investment instrument matures, the funds made available must be expended for an affordable housing activity. Disbursement for this purpose means actual expenditure, not just the obligation of funds. If the funds are not needed for an activity at that time, the funds could be reinvested as long as on the 2-year anniversary of the drawdown from LOCCS, all funds drawn down for investment purposes have been disbursed for affordable housing activities. Any invested funds not expended on affordable housing activities by the 2-year anniversary must be returned to LOCCS by the recipient. Any interest accrued prior to the expiration of the 2-year period is program income. Because the regulation at 24 CFR §1000.58(g) restricts the investment period to 2 years, any interest accrued after the expiration of the 2-year period must be returned to the Department.

- 8. ELIGIBLE INVESTMENT INSTRUMENTS:** 24 CFR §1000.58(c) states that recipients shall invest IHBG funds only in:
- a. Obligations of the United States; obligations issued by Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or
 - b. Accounts that are insured by an agency or instrumentality of the United States or fully collateralized to ensure protection of the funds, even in the event of bank failure.

Collateralization shall consist of identifiable U.S. Government securities as prescribed by HUD and specific authority contained in the agreement permitting HUD to exercise its rights pursuant to 24 CFR §1000.60.

- 9. PAPERWORK REDUCTION ACT:** The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-35200 and assigned OMB control number 2577-0218 (Exp. 05/31/2009). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

10. CONTACTS: Should you need additional information, please contact your Area Office of Native American Programs.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing